

Applicant: Rudnick et al.
Application Serial No.: 10/775,536
Filing Date: February 10, 2004
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REMARKS

Claims 26-37 stand rejected on the grounds of non-statutory obviousness-type double patenting as being unpatentable over claims 1-10, 18, 26, 29, 32, 72 and 81 of U.S. Patent No. 6,1389,277. Claim 26 is rejected on the grounds of non-statutory obviousness-type double patenting as being unpatentable over claim 10 of U.S. Patent No. 5,575,816.

In response to these rejections and upon otherwise obtaining an indication of allowable subject matter, applicant will file an appropriate Terminal Disclaimer overcoming these obviousness-type double patenting rejection. Accordingly, these rejections are believed obviated.

Claims 26, 30, 31, 33 and 34 are rejected under 35 U.S.C. §102(b) as being anticipated by or in the alternative under 35 U.S.C. §103(a) as being obvious over U.S. Patent No. 2,780,274 to Roberts et al. (hereinafter "Roberts"). This determination is respectfully traversed.

It is respectfully submitted that Roberts neither anticipates nor renders obvious the claims of the present invention. First and foremost, the claims of the present invention are directed to an implantable intraluminal device wherein the device specifically includes an elongate tubular stent. The term "intraluminal" taken from its dictionary definition means "situated within,

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occurring within, or introduced into the lumen". Meridan-Webster's Medical Dicitonary.

Meridan-Webster, Inc. 06 February 2008. The word stent is defined as "a small, expandable tube used for inserting into a blocked vessel or other part". Dictionary.com, Unabridged (V1.1).
Random House, Inc. 06 February 2008.

The Roberts reference is neither intraluminal nor a stent. Accordingly, as the claims define two significant limitations not disclosed whatsoever in Roberts, Roberts as a matter of law cannot anticipate the claims of the present invention.

Moreover, Roberts fails to disclose or suggest the features set forth in the present invention. Roberts is directed to a flexible hose having a reinforced corrugated body. There is no disclosure to employ the flexible corrugated hose of Roberts either intraluminally, i.e., inside of anything, or as a stent, i.e., a medical device used to hold open a vessel. The Roberts device is a radiator hose used to connect two open ends of a cooling system. The Roberts device is not designed to be inserted into any other tubular device or lumen. Moreover, the Roberts device is not a medical device, two clear requirements of the claims of the present invention.

The Examiner contends that the reference is within the filed of the inventor's endeavor and, if not, is reasonably pertinent to the particular problem which the inventor was involved. It

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is respectfully submitted that neither of these assertions applies here. First and foremost, the reference is not within the field of the inventor's endeavor. The field of implantable intraluminal medical devices is a field which is dominated by biomechanical engineers and surgeons. This is substantially different from auto mechanics which use flexible radiator hoses. It is extremely unlikely that biomechanical engineers and surgeons designing products to be used within the vascular system of a patient would find radiator hoses to be within their field of endeavor.

In addition, the reference is not reasonably pertinent to the particular problem which the inventor was involved. The inventor of the claimed invention herein is addressing the problem of holding open an otherwise blocked, constricted or occluded lumen. These stents are designed to be flexible so they can easily maneuver through various body vessels. Once in position, these devices are deployed to expand to an uncompressed state to hold open the lumen. Specification, page 1, lines 10-21.

The radiator hose shown in Roberts is not designed to be inserted intraluminally into any lumen. Moreover, the radiator hose shown in Roberts is not designed to be expanded from a first condition to a second condition upon intraluminal positioning as is commonly done with stents. Therefore, the Roberts reference is not pertinent at all to the particular problem which was presented to the inventor. The Examiner seems to focus only on certain goals such as a device

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which has compressive restraint and is flexible. The claimed intraluminal stent, however, addresses goals which go beyond those enumerated by the Examiner, such as the fact that the device must function intraluminally as a stent. These goals are not disclosed nor reasonably suggested by Roberts. It is, therefore, respectfully submitted that Roberts is not analogous art as it is not within the field of the inventor's endeavor and is not reasonably pertinent to the particular problem which the inventor was involved. Reconsideration is respectfully requested.

Claims 16-28, 30, 31, 33, 34 and 37 are rejected under 35 U.S.C. §102 as being anticipated by U.S. Patent No. 5,545,211 to An et al. (hereinafter "An"). In addition, claims 29 and 36 are rejected under 35 U.S.C. §103 as being unpatentable over An in view of U.S. Patent No. 5,653,747 to Dereume. Each of these rejections is respectfully traversed.

The above rejections are based on the use of the An reference as a primary reference. An is cited as a reference under 35 U.S.C. § 102(e). The An reference has an effective date for citation purposes of September 22, 1994, its U.S. filing date. The present application claims priority to a filing date of August 12, 1994, which is prior to the effective citable date of An. Accordingly, it is respectfully submitted that An is not available as a reference against the claims of the present application. Having removed An as an effective reference, the rejections under 35 U.S.C. §102(b) and 35 U.S.C. §102(e) based thereon is believed to be overcome.

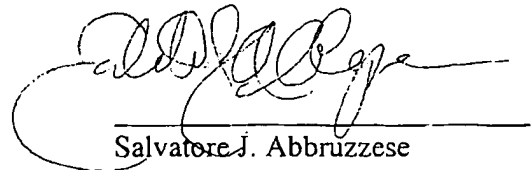
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Having responded in full to the present Office Action, it is believed that claims 26-37 define patentably over the references of record. Accordingly, the application is believed to be in condition for allowance. Favorable action thereon is respectfully solicited.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 08-2461. Such authorization includes authorization to charge fees for extensions of time, if any, under 37 C.F.R. § 1.17 and also should be treated as a constructive petition for an extension of time in this reply or any future reply pursuant to 37 C.F.R. § 1.136.

Should the Examiner have any questions regarding this response, the undersigned would be pleased to address them by telephone.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Salvatore J. Abbruzzese', is written over a horizontal line.

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